Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

DARYL DAHLQUIST,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Washington

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Washington Court of Appeals erred in finding that constitutional issues relating the First Amendment cannot be raised for the first time on appeal?

Whether the May 30, 1995 injunction against filing further lawsuits without prior court approval constituted an unlawful prior restraint on a First Amendment freedom?

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PETITION FOR WRIT OF CERTIORARI

DARYL DAHLQUIST (DAHLQUIST) respectfully prays that a Writ of Certiorari issue to review the Washington Court of Appeals decision in *Dahlquist v. Vukich*, No. 57026-9-I (October 30, 2006), on the grounds that it violates the First Amendment, right to petition and effected a prior restraint on the right to petition for redress of grievances and access to the courts. Review is vital as the case in which he was prohibited from filing lawsuits he was the Defendant, and was not based on his having filed a particular lawsuit.

OPINIONS BELOW

Dahlquist v. Vukich, Order Denying Motion to Modify, Washington Court of Appeals No. 57026-9-I (February 2, 2007) App. 1

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JURISDICTION

The instant Petition is filed under 28 U.S.C. § 1257 and the Washington Court of Appeals denial of rehearing was entered on January 9, 2008.

CONSTITUTIONAL PROVISIONS

AMENDMENT I

"Congress shall make no law . . . or abridging . . . the right of the people . . . , and to petition the Government for a redress of grievances."

AMENDMENT XIV

SECTION 1. . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws. . . .

STATEMENT OF THE CASE

Daryl Dahlquist and Patrick Vukich own adjacent properties. This action arose after previous cases involving their attempts to adjudicate property disputes culminating in Mr. Vukich's claim that he had properly purchased in a sheriff's sale Dahlquist's interest in the neighboring property.

Vukich claimed that Dahlquist did not raise in time the issue of his right of homestead in the course of the sheriff's sale. The chronology of the sale is set forth in some detail in an unpublished ruling by Division I in that Court's Cause No. 50704-4-1, filed in August of 2003. Although unpublished, that opinion is a part of the res gestae in this proceeding. See App. 19-29. The opinion sets out facts which are not disputed. A sheriff's sale of Dahlquist's interest in real property was conducted on March 15, 2002. On April 15, 2002, Dahlquist filed an objection to the sheriff's sale. On April 29, 2002, Dahlquist asserted a claim that he had a right of homestead which should be considered in connection with the sale.[1] The trial court granted the motion to confirm the sheriff's sale on June 7, 2002, as noted by the appellate court "without substantive findings."

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[1] The assertion of the right of homestead by Dahlquist at the time noted Vukich bid $10,000.00 in the sheriff sale for property worth $160,000.00. Following the petitioner's one year right of redemption Vukich received his $10,000.00 bid back.

Relying on the Court of Appeals opinion in Cause No. 50704-4-I, referring to the availability of an "independent action," Mr. Dahlquist filed a lawsuit against Mr. Vukich, only to be informed by a judge of the superior court that he could not file the lawsuit both because of the 1995 injunction preventing him from filing his lawsuit without court approval against any member of the Vukich family at any time, and because at the time that court reviewed his complaint, his claim had become time-barred. The disputes over the sale of property involving Vukich and Dahlquist are subsequent to the entry of this injunctive order, although they have been assigned a pre-existent cause number. An objection to the filing of an attempted "independent action" was noted by Vukich and his attorney in the Cause No. 93-2-28320-2 SEA and the caption of *Patrick Vukich v. Daryl Dahlquist and Cecile Martel*. Vukich claimed that there should only be assigned the cause number in the original proceeding. Vukich's objection to the filing provides a history of controversy involving the Dahlquist family and Vukich. That objection supports Dahlquist's assertion that prior to 2003 Petitioner had not sued Vukich. Dahlquist did not have a history of initiating vexatious lawsuits against Vukich prior to the 1995 injunction. He had no history of being a plaintiff in any action prior to the 1995 injunction. Dahlquist's assertion of damage to his homestead right should not reasonably be considered a vexatious lawsuit. Significantly, the Vukich objection to the homestead claim notes "counsel (*for Vukich*) has not had sufficient time to investigate or research all aspects of the

homestead claim, but this appears to be yet another attempt by Dahlquist to avoid responsibility." Despite the inconclusive investigation of the validity of the right, Vukich succeeded in opposing Dahlquist's motion for permission to file a lawsuit, permission required only because of the existence of the 1995 injunction.

Counsel for Vukich could not affirmatively represent that the homestead right assertion was frivolous or intended as an act of harassment and because the injunction itself has skewed Dahlquist's right of access to the courts, and because the trial court below seems to have presumed that Dahlquist had no right to file a lawsuit, the trial court's ruling preempting the lawsuit should be reversed and the lawsuit should follow its normal course.

REASONS FOR GRANTING THE WRIT

Review is warranted because the Washington Court of Appeals and the Washington Supreme Court erred in their analysis of whether this case raises issues of unlawful prior restraint on a First Amendment freedom and when those issues can be raised.

The present petition focuses on Dahlquist's claim that a significant question of law under the Constitution of the United States is involved, and that the decision of the Court of Appeals is in conflict with decisions of the United States Supreme Court.

The order of the trial court judge entered on May 30, 1995, requiring Petitioner to seek judicial review before filing his lawsuit constitutes an unlawful prior restraint upon the exercise of his First Amendment freedoms, a matter of significant public interest.

The Court erred in finding that constitutional issues relating to the First Amendment cannot be raised for the first time on appeal.

The First Amendment of the Constitution of the United States applies both to the right of free speech and the right to petition the government for redress. *Richmond v. Thompson*, 130 Wash.2d 368, 922 P.2d 1343 (1996). The Court above noted that First Amendment issues or issues involving a fundamental constitutional right may be considered for the first time on appeal. *Richmond*, *supra*, at 385. See also *State v. WWJ Corp.*, 138 Wash.2d 595, 980 P.2d 1257 (1999), holding that a party may raise for the first time on appeal a manifest error affecting a constitutional right under Local Rules of Appellate Procedure 2.5(a). The error must be "manifest" and "truly of constitutional magnitude." (*Ibid.*, p. 602). In the present case, it is submitted that the First Amendment claims address a constitutional right of Mr. Dahlquist. It is claimed also that an overbroad injunction restraining Appellant's First Amendment rights constitutes a manifest error. An error is manifest error, generally relating to criminal cases, if it "had practical and identifiable consequences in the trial of the case." *State v. Mills*, 154 Wash.2d 6, 109

P.3d 415 (2005). In the present case, there was manifest error in application, by the clerk of the court and the trial court, of an injunction preventing Dahlquist from exercising his First Amendment right of access to the courts; the injunction was a prior restraint on First Amendment rights and it was overbroad in violation of constitutional principles relating to prior restraint concepts. The insistence upon application of the injunction resulted in injurious delay of access to the courts which allowed the court to dismiss the case based upon the running of the statute of limitations.

The May 30, 1995 injunction against filing further lawsuits without prior court approval constituted an unlawful prior restraint on a First Amendment freedom.

Vukich sought and obtained a blanket and infinite prohibition from Superior Court Judge Michael Fox preventing Dahlquist from filing any kind of lawsuit against Vukich and his family unless and until Dahlquist obtained the Court's permission to file the lawsuit. This censorship constitutes a prior restraint on a First Amendment right of access to the courts. The trial court's order included no finding that Dahlquist had a history of filing "vexatious and oppressive lawsuits" against the Vukich family.

Judge Fox's order of 1995, which prevented Dahlquist from filing a lawsuit without prior approval of the court, is not narrowly crafted, is permanent by its terms, and does not assign a factual

basis for authorization of that extraordinary device. Dahlquist has, and does not lose, a First Amendment right of access to the courts. *Gig Harbor Marina v. Gig Harbor*, 94 Wash.App. 789, 799, 973 P.3d 1081 (1999).

> A prior restraint is a concept used:
>
> "to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur . . . Permanent injunctions; i.e., court orders that actually forbid speech activities, are classic examples of prior restraint."

Alexander v. United States, 509 U.S. 544, 550 (1993), cited in *In re Marriage of Suggs*, 152 Wash.2d 74, 81, 93 P.3d 161 (2004).

A prior restraint upon expression comes with a "heavy presumption" against its constitutional validity. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Prior restraints on First Amendment activities may not sweep more broadly than necessary. *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376, 390 (1973). It has been held that an order issued in the area of First Amendment rights must be precise and narrowly tailored to achieve the particular objective of the needs of the case. *Caroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 183-184 (1968).

The court can order prior restraint on a plaintiff who is found to be a vexatious litigant. The question is: can the court apply prior restraint on litigation against a person who has never been a plaintiff.

The Court of Appeals for the Ninth Circuit found that Jarek Molski was a vexatious litigant. "Molski, who is paralyzed from the chest down, needs a wheelchair to get around. He has filed about 400 lawsuits in the federal courts within the districts in California." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007).

Although Dahlquist has filed counterclaims in actions in which he has been a named Defendant against Vukich, he has not been the plaintiff in any action against Vukich.[2]

In *Tory v. Cochran*, the U.S. Supreme Court, despite the death of celebrity lawyer Johnny Cochran, vacated an injunction obtained by Mr. Cochran enjoining a former client from picketing, displaying signs or other written or printed material, or from uttering statements about Johnny Cochran or his law firm in any public forum. *Tory v. Cochran*, 544 U.S. 734 (2005). In that case the Court noted that a person subject to a court's injunction could challenge the

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[2] Patrick Vukich, a single man, Plaintiff v. Betty C. Dahlquist, individually, and as Court-Appointed Guardian for Fred J. Martel; Cecile E. Martel, a single woman, and Daryl L. Dahlquist, a single man, Defendants. Cause No. 91-2-14190-8 SEA. Case was dismissed on May 11, 1993.

constitutional validity of the injunction at the time of issuance or at any time when there is a claimed violation of the injunction. *Tory, supra*, citing *People v. Gonzalez*, 12 Cal. 4th 804, 818, 910 P.2d 1366, 1375 (1996). In the present case, as is evident from Judge Trickey's ruling, an ongoing injunction entered in 1995 was invoked for recent application by Mr. Vukich.

Dahlquist's failure to appeal the order in 1995 does not waive his right to contest the constitutionality of that order at this time.

Although Judge Trickey at the hearing of September 1, 2005 noted that there were federal cases addressing issues similar to the ones raised by petitioner, no specific cases were cited to support the proposition that Judge Fox's order was not an unconstitutional prior restraint on Dahlquist's First Amendment right of access to the courts.

As noted by Vukich, Dahlquist filed his lawsuit March 15, 2005, within the relevant time for filing lawsuits of this nature, assuming a three-year statute of limitations. He served Vukich within 90 days of the date of filing. The filing was then summarily extirpated by the clerk as a filed case. When Dahlquist sought court permission to file his case, Vukich claimed that the statute of limitations had run on the claim during the filing interim.

CONCLUSION

An unconstitutional restraint upon Dahlquist's right of access to the courts and his First Amendment rights has prevented him from pursuing a claim against a neighbor who enjoyed a considerable financial windfall at the expense of suppression of Dahlquist's right of homestead.

It is urged that the proceedings below should be reversed and that Dahlquist's claims should be remanded for trial.

Respectfully submitted,

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

DARYL DAHLQUIST, Appellant, v. PATRICK VUKICH, Respondent.	)	NO. 57026-9-I ORDER DENYING MOTION TO MODIFY

Appellant Daryl Dahlquist has moved to modify the commissioner's October 24, 2006, ruling granting motion on the merits to affirm. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 2nd day of February, 2007.

/s/ Dwyer, J.

/s/ Appelwick, C.J. /s/ Grosse, J.

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

DARYL DAHLQUIST, Appellant, v. PATRICK VUKICH, Respondent.	NO. 57026-9-I COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS TO AFFIRM

Daryl Dahlquist appeals from the superior court order denying him permission to file a lawsuit against Patrick Vukich. Because Dahlquist provides not persuasive authority that the superior court abused its discretion in denying permission, the motion on the merits is granted, and decision of the superior court is affirmed.

FACTS

In the context of a boundary dispute that dates back to the 1970's, Patrick Vukich filed a quiet title action to address "wild deeds" issued by Dahlquist purporting to convey title to property held by Vukich. Dahlquist filed counterclaims against Vukich for damages. In 1995, the superior court concluded that Dahlquist was attempting to relitigate claims resolved by a stipulated settlement between Vukich's and Dahlquist's predecessor in interest. The superior court entered an order requiring Dahlquist to obtain

permission from the court before filing any further legal action against Patrick Vukich and directed the clerk of the superior court not to accept any further filings by Dahlquist against Vukich without such permission.

In 2002, the sheriff conducted an execution sale of property owned by Dahlquist. Vukich purchased the property. Dahlquist attempted to assert a homestead claim, but on June 7, 2002, the superior court entered an order confirming the sheriff's sale. Dahlquist appealed. On August 18, 2003, a panel of judges of this court affirmed the trial court's order confirming the sheriff's sale. The panel held that Dahlquist's objection to the order confirming the sale was time barred, but the panel expressly noted that Dahlquist could assert his homestead claim by bringing "an independent action to pursue his homestead claim."[1]

On March 15, 2005, Dahlquist attempted to file a lawsuit against Vukich asserting his homestead claim. The superior court clerk assigned a cause number to the complaint. On May 26, 2005, Vukich appeared and noted that Dahlquist had not obtained permission as required by the 1995 court order. The superior court clerk then rejected the complaint, and Dahlquist does not dispute that the superior court clerk returned his rejected complaint.

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[1] *Vukich v. Dahlquist*, 118 Wn. App. 1012, 2003 Wash. App. LEXIS 2438 (2003).

On August 8, 2005, Dahlquist filed a motion seeking approval to proceed with a lawsuit against Vukich based on his claim of homestead. The superior court denied the motion concluding that "Mr. Dahlquist's claim for homestead is time barred, and therefor lacks merit" and that his "lawsuit does not state a valid legal basis upon which he may assert a claim of homestead at this time."

Dahlquist appeals.

CRITERIA FOR GRANTING A MOTION ON THE MERITS TO AFFIRM

RAP 18.14(e)(1) provides:

> A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the . . . commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

Applying these criteria in light of *State v. Rolax*,[2] The commissioner determines that the issue presented is clearly without merit.

DECISION

An appellant is obligated to provide adequate briefing on appeal, especially as to constitutional arguments. This court need not address inadequately briefed arguments.[3] These requirements are not arbitrary, and a party may not compel the court to scour the legal landscape to make sense of vague and general assertions of law thrown together by a disgruntled litigant.

The core issue in this appeal is whether the superior court abused its discretion when it denied Dahlquist's motion for permission to file an independent action for a homestead claim against Vukich. Mr. Dahlquist filed his amended appellant's brief on July 7, 2006 but his brief cites only two obscure federal cases and two federal statutes regarding prisoner's claims that have only indirect significance, if any, to this appeal. He filed his reply brief on September 7, 2006, focusing on the factual history of the

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[2] 104 Wn.2d 129, 702 P.2d 1185 (1985).

[3] *Spokane v. Taxpayers*, 111 Wn.2d 91, 96, 758 P.2d 480 (1988); *State v. Davis*, 53 Wn. App. 502, 506, 768 P.2d 499 (1989); *State v. Wheaton*, 121 Wn.2d 347, 365, 850 P.2d 507 (1993); *Bohn v. Cody*, 119 Wn.2d 357, 368, 832 P.2d 71 (1992); *State v. Elliot*, 114 Wn.2d 6, 15, 758 P.2d 440, *cert. denied*, 498 U.S. 838 (1990).

litigation and the facts he would rely upon to establish a homestead claim if his case went to trial.[4] He cites to five Washington cases in his reply brief, one of which is this courts's prior unpublished opinion affirming the order confirming the sheriff's sale. Two cases are cited in support of a confusing "res ipsa loquitur" argument. The other case on the limits of contempt power, is apparently cited to help explain why the superior court voided its order holding Dahlquist in contempt for failing to remove his trailer from the property. His reply brief also includes a passing reference to a petition he filed in superior court that refers to the First Amendment, and the Equal Protection Clause of the Fourteenth

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[4] The reply brief invokes RAP 9.11 as authority for his attachment of numerous exhibits he wants this court to consider for the first time on appeal. Pursuant to RAP 9.11(a), additional evidence may be taken by an appellate court if:

> (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

The appellate court will accept new evidence if all six of the conditions are met. *State v. Ziegler*, 114 Wn.2d 533, 541, 789 P.2d 79 (1990). None of the six conditions are satisfied to the extent that Mr. Dahlquist's reply brief is an attempt to obtain relief under RAP 9.11, his request is denied.

Amendment of the United States constitution in its title. The reply brief contains no meaningful discussion of these authorities.

Just four days before oral argument on the motion on the merits, Mr. Dahlquist filed a "supplemental response" to the court's motion on the merits. Rather than merely discussing the criteria for a motion on the merits, the supplemental response includes at least two entirely new arguments. For the first time, Dahlquist argues that the 1995 order is a prior restraint on his first amendment right to petition the courts and he contends he may raise this constitutional argument for the first time in this appeal. He also argues for the first time that RCW 4.16.230 tolls any statute of limitations on his independent action for a homestead claim. These new arguments raised so late in this appeal do not warrant consideration.[5] But even assuming that the supplemental authority had been timely presented, Dahlquist provides no persuasive authority and his briefing remains inadequate.

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[5] An appellate court will not consider an issue raised for the first time in a reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *In re Marriage of Sacco*, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990); *State v. Moore*, 70 Wn. App. 667, 675 n.9, 855 P.2d 306 (1993) (raised for the first time at oral argument). An appellate court may, but need not, consider a constitutional issue raised for the first time in a reply brief. *State v. Peerson*, 62 Wn. App. 755, 778, 816 P.2d 43, (1991), *review denied*, 118 Wn.2d 1012 (1992).

First, Dahlquist raises several arguments challenging the validity of the 1995 order that requires the court's permission before he can file any lawsuit against Vukich. But Dahlquist never appealed the 1995 order. For the first time in his "supplemental response" to the motion on the merits, Dahlquist contends that the 1995 order is an unconstitutional "prior restraint" on his right petition the courts and that he may raise such a challenge at any time. He relies primarily upon general prior restraint cases and the United States Supreme Court decision in *Tory v. Cochran*[6] including the Supreme Court's citation to *People v. Gonzalez*.[7] But *Tory* involved a question of mootness in a direct and timely appeal of a permanent injunction on speech in a defamation action. The Supreme Court cited *Gonzalez* where a California court applied California law to conclude that a party can wait until a violation of an injunction is alleged to challenge the validity of the injunction. Dahlquist provides no authority apply the concept of prior restraint to a moratorium on filing a law suit. He provides no authority that a person subject to such a moratorium in this state may wait until a violation is alleged to challenge the validity of the court order.

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[6] 544 U.S. 734, 125 S. Ct. 2108, 161 L. Ed. 2d 1042 (2005).

[7] *Tory v. Cochran*, 544 U.S. at 737 citing *People v. Gonzalez*, 12 Cal. 4th 804, 818, 50 Cal. Rprt. 2d 74, 910 P.2d 1366 (1996).

Dahlquist has not adequately briefed his constitutional argument.[8]

Second, even ignoring the untimeliness of his challenge to the 1995 order, RCW 2.28.010(3) recognizes the authority of the courts to provide for orderly conduct of proceedings. The court rules also recognize the goal of just, speedy, and inexpensive determination of every action. CR1. A court may in its discretion, place reasonable restrictions on any litigant who abuse the judicial process including a moratorium upon filing of various motions or pleadings. *Marriage of Giordano*, 57 Wn. App. 74, 78, 787 P.2d 51 (1990). (approving moratorium upon party filing any motions pending resolution of trial). A court may also enjoin a person from participating in litigation where there is a pattern of abusive and frivolous litigation and the order is not more comprehensive than necessary to remedy the proven abuses. *Whatcom Co. v. Kane*, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981); *see Desmos v. Storrie*, 507 U.S. 290, 113 S. Ct. 1231, 122 L. Ed. 2d 636 (1993) (barring filing of petitions by a party who has demonstrated abusive pattern of filings.)

Dahlquist argues that he had never filed a lawsuit against Patrick Vukich and therefore has no history of abusive litigation directed against Patrick Vukich. But Dahlquist clearly asserted counterclaims

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[8] *Spokane v. Taxpayers*, 111 Wn.2d 91, 96, 758 P.2d 480 (1988); *State v. Davis*, 53 Wn. App. 502, 506, 768 P.2d 499 (1989).

against Vukich in his quiet title action brought by Vukich to clear his title of the "wild deeds" issued by Dahlquist. The 1995 order recites that Dahlquist was attempting to relitigate claims that had been resolved by the stipulated settlement. The record before the superior court in opposition to Dahlquist's motion for permission to file the new lawsuit against Vukich also included a history of claims asserted by Dahlquist against Vukich in a variety of settings.[9] In this

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[9] The record includes the July 25, 1995 order rejecting counterclaims raised by Dahlquist against Vukich in a quiet title action brought by Vukich. The court expressly concluded that there is no legal basis for Dahlquist's claims of title, "[h]is submissions have been lengthy, but virtually incomprehensible. This has been an abuse of the judicial process." The court awarded Vukich his attorney fees as a sanction for having to defend Dahlquist's "meritless claims." On March 5, 1997, the superior court found Dahlquist in contempt for continuing to trespass and dump trash upon Patrick Vukich's property. On October 24, 2003, Dahlquist filed a pleading in superior court captioned "Daryl L. Dahlquist, plaintiff vs. Lex Mathis and James Pleasants and Pat Vukich, defendants." The pleading sought review by the superior court of a district court order with an assertion by Dahlquist that "it's a 'citizens arrest' and Im [sic] seeking assistance to proceed. [sic]." Additionally, on January 10, 2005, Dahlquist filed in superior court a pleading captioned Daryl Leroy Dahlquist vs. Lex Mathis, and James Pleasants, and Pat Vukich" and entitled "Petition for Redress of Grievance, First Amendment, U.S. Constitution, & Equal Protection of the Law, Fourteenth Amendment." Dahlquist's eighteen page petition is addressed to the President and the prosecuting attorney and among other relief requests that felony perjury charges be filed against Patrick Vukich. Although most of these events occurred after the 1995 order requiring permission was issued, they were before the superior court when

(Continued on following page)

context, Dahlquist does not establish that the superior court abused it discretion when it entered its 1995 order requiring Dahlquist to obtain permission to file litigation against Vukich. Contrary to Dahlquist's argument, there is nothing in the 2003 opinion from this court that directly or indirectly waives or supercedes the 1995 order requiring Dahlquist to obtain permission before filing a lawsuit against Vukich.

Finally, to the extent that Dahlquist contends the superior court abused its discretion by denying him permission to file his new lawsuit, the superior court reasonably relied upon the untimeliness of Dahlquist's independent action to assert a homestead claim. Dahlquist waited until August 8, 2005 to seek permission to file his new lawsuit against Vukich with no explanation of his delay.[10] Dahlquist cites no persuasive authority that he had an independent action for a homestead claim that survived until August 8, 2005, more than three years after the June 7, 2002, order confirming the sheriff's sale and almost exactly two years after this court's opinion alerted him to his option to file an independent action.[11]

Dahlquist requested permission to file his independent action asserting a homestead exemption.

[10] CP 253-257.

[11] As noted in the August 18, 2003 unpublished opinion, an objection to a sheriff's sale addresses procedural irregularities, but an individual may still have an independent action to assert a homestead claim after the sheriff's sale has been confirmed.

(Continued on following page)

On the eve of the argument of the motion on the merits, Dahlquist submitted his "supplemental response" citing for the first time RCW 4.16.230, which applies to toll the statute of limitations "[w]hen the commencement of an action is stayed by injunction or a statutory prohibition . . . " But Dahlquist merely notes that the statute "would seem to apply" and he cites no caselaw or legislative history that the statute has any application to an order requiring permission before filing a new lawsuit. Especially because he has not adequately briefed the assertion that the statute of limitations for his independent action to assert a homestead claim was indefinitely suspended under RCW 4.16.230, his argument does not support any relief on appeal. Dahlquist's argument also presumes that if he had been granted permission in August of 2005 to file a complaint against Vukich, that the order granting permission would "related back" to the March 15, 2005 date he

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Constanzo v. Harris, 71 Wn.2d 254, 258-59, 427 P.2d 963 (1967) (" . . . it would have been impossible to dispose of an issue of "homestead validity" had it been raised during the confirmation of the sheriff's sale. The only objection that the court could have considered at that time would have been alleged irregularities relating to the manner in which the sale was conducted. The question of a person's rights under a homestead declaration would have *been left to an independent action. Domke v. Beck*, 18 Wn.2d 568, 139 P.2d 1017 (1943); *Scott v. Guiberson*, 72 Wash. 36, 129 Pac. 886 (1913)."). But that does not mean that there is not a time limit on filing such a claim. Dahlquist cites no authority addressing the limitations period for such a claim, but appears to concede that a three year limitation period applies.

had filed his complaint even though the superior court clerk ultimately rejected that filing. He provides no authority for his "relation back" argument especially when the 1995 order expressly directed the clerk not to accept any such filings without an order granting permission.[12]

The vague and general authority cited by Dahlquist is not persuasive. The criteria for a motion on the merits to affirm have been satisfied. Now, therefore, it is hereby

ORDERED that the motion on the merits is granted, the decision of the trial court is affirmed.

Done this 30th day of October, 2006.

/s/ James R. Verellen
Court Commissioner

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[12] For purposes of tolling a statute of limitations, a complaint must be properly filed to toll the statute of limitations. See *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 963 P.2d 907 (1998) (delivery to "rapid filing box" ineffective filing to toll statute of limitations); *Howlett v. Weslo Inc.*, 90 Wn. App. 365, 951 P.2d 831 (1998) (amended complaint did not relate back to the initial product liability complaint filed in district court, when district court allowed amendment and then purported to transfer the lawsuit to superior court.)

KING COUNTY SUPERIOR COURT
IN AND FOR THE STATE OF WASHINGTON

PATRICK VUKICH	)	**NO. 93-2-28320-2 SEA**
Plaintiff	)	**ORDER DENYING**
vs.	)	**MOTION OF DARYL**
	)	**DAHLQUIST FOR**
DARYL DAHLQUIST and CECILE MARTEL	)	**PERMISSION TO**
	)	**FILE LAWSUIT**
Defendants	)	(Filed Nov. 14, 2005)

THIS MATTER came on for hearing on September 1, 2005 before the Hon. Michael Trickey, Judge of the above entitled court, upon the motion of Daryl Dahlquist for an order granting approval to proceed with a lawsuit against Patrick Vukich. Present were Daryl Dahlquist, represented by his attorney, Christopher K. Steuart, and Patrick Vukich, represented by his attorney, James F. Pleasants. The court considered the argument of counsel, and the following pleadings submitted by the parties:

BY DARYL DAHLQUIST:

1. Motion for order granting approval to proceed with suit as originally filed together with exhibits as follows: Declaration of Daryl Dahlquist date July 25, 2005; Order on motion for summary judgment; amended order on motion for summary judgment; opinion of Washington Court of appeals No. 50704-4-I; and Declaration of Betty Dahlquist dated April 29, 2002.

2. Reply to objection to motion for order granting approval to proceed with suit as originally filed.

SUBMITTED BY PATRICK VUKICH:

A. Objection to Dahlquist's motion for permission to file lawsuit, with exhibits:

1. Dahlquist's complaint for damages filed 3-15-05 without court permission under Cause No. 05-2-08883-4;
2. Notice of Appearance by Patrick Vukich, citing injunction against the new case filing;
3. First Judgment against Daryl Dahlquist for damages for trespass;
4. Second Judgment against Daryl Dahlquiat [sic] for contempt;
5. Statement of Lex Mathis regarding grounds for concluding that the foreclosed property was not homestead property;
6. Decision of the Court of Appeals upholding the execution on Dahlquist's rental property;
7. Dahlquist Declaration of homestead dated April 29, 2002 (after the execution sale.);
8. Objection to Motion confirming Sheriff's Sale, filed by Dahlquiat's [sic] attorney;
9. Court of Appeals decision regarding the last attempt to interfere with Vukich's title by Betty Dahlquist;

10. Dahlquist's filing attempting to make a citizen's arrest of Pat Vukich et al. under Cause no. 03-1-04844-1 SEA;

11. Dahlquist letter to Governor Locke and others dated 1-18-2000, showing address of 15238 S.E. 272nd as his return address, rather than the alleged homestead property;

B. Supplemental materials in support of objection to lawsuit, with exhibits:

1. Declaration of Julianna Duso in support of Plaintiff's motion to confirm.

2. Copy of RCW 6.23.020 in regard to the debtor's right to redeem and the time for doing so.

3. RCW 6.13.040 regarding declaration of homestead.

4. Annotations regarding requirement that homestead be selected before the execution sale in order to block the execution sale.

THE COURT FINDS that:

1. The Order issued by Judge Fox on May 30, 1995 restrained Dahlquist from "filing any further legal action against Mr. Vukich . . . without a court order allowing such filing." That order is a final order, binding on Mr. Dahlquist.

2. On March 15, 2005, Mr. Dahlquist filed an action called a Complaint for Damages against Patrick Vukich under cause No 05-2-08883-4 KNT. Mr.

Dahlquist did not obtain a court order prior to filing that cause of action. The filing was in violation of the Judge Fox's restraining order, and was properly rejected by the clerk of court under the terms of the restraining order.

3. With regard to Dahlquist's current motion for permission to permit the lawsuit against Mr. Vukich as originally filed, the Court find [sic] that Mr. Dahlquist's claim for homestead is time barred, and therefore lacks merit. Dahlquist's homestead declaration was filed after the sale had occurred, and was therefore not timely. The Court of Appeals also found that Dahlquist's objection to confirmation of sale based on homestead was not timely. Dahlquist's lawsuit does not state a valid legal basis upon which he may assert a claim of homestead at this time.

IT IS HEREBY ORDERED that Dahlquist's motion for order granting approval to proceed with suit as originally filed is denied.

So ordered this 10th day of Nov, 2005.

/s/ Michael Trickey
Hon Michael Trickey

Presented by:

/s/ James F. Pleasants
James F. Pleasants WSBA #8541
Attorney for Plaintiff Patrick Vukich

Copy Received, Notice of Presentation Waived and Approved as to Form:

/s/ Christopher K Steuart
Christopher K Steuart WSBA #24583
attorney for Defendant Daryl Dahlquist

2003 WL 21958002

NOTE: UNPUBLISHED OPINION,
SEE RCWA 2.06.040

Court of Appeals of Washington, Division 1.
Patrick VUKICH, Respondent,
v.
Daryl DAHLQUIST, Appellant,
and Cecile Martel, Defendant.
No. 50704-4-I.

Aug. 18, 2003.

Appeal from Superior Court of King County.

Daryl Dahlquist (Appearing Pro Se), Kent, WA, Christopher Kirk Steuart, Attorney at Law, Seattle, WA, for Appellant.

Alexis Mathis, Sound Law Group PLLC, Seattle, WA, for Respondent.

UNPUBLISHED OPINION

AGID, J.

Appellant Daryl Dahlquist appeals a superior court decision granting respondent Patrick Vukich's motion for order confirming a sheriff's sale. He asserts the trial court erred by confirming the sale because the sale was void and rejecting or refusing to consider his homestead claim. Vukich counters that there was sufficient evidence that Dahlquist did not reside on the property, and Dahlquist's objection to the sale based on his homestead rights is time barred.

We affirm the trial court because as a matter of law, Dahlquist's objection to the sale was time barred.

FACTS

On March 15, 2002, one-third of Dahlquist's interest in real property located at 15242 SE 272 Street in Kent, Washington, was sold at a sheriff's auction. Before the sale, Vukich's attorney researched Dahlquist's residential status and presented the superior court with several declarations and certified mail receipts that suggested Dahlquist resided on the lot adjacent to the property at issue. Dahlquist also received two notices of the sale, delivered to 15238 SE 272 Street in Kent, Washington, on February 9 and 14, which Dahlquist signed and accepted. The sheriff's sale was held on March 15, and on March 20, the sheriff's office provided notice of the sale to all parties.

On April 15, 2002, Dahlquist filed a pro se objection to the sheriff's sale,[1] and seven days later Vukich brought a motion to confirm the sale. On April 29, Dahlquist filed his objection through an attorney, asserting the trial court should refuse to confirm the sale because it was improperly conducted under non-homestead rules. The trial court granted Vukich's motion to confirm the sale on June 7, 2002, without substantive findings. Dahlquist appeals, asking this

[1] Dahlquist asserted a homestead claim for the first time in this objection.

court to remand for supplemental proceedings to determine his homestead rights.

ANALYSIS

I. Was Dahlquist's objection to the sale time barred?

'After a judgment creditor has obtained a writ of execution and the sheriff has sold the debtor's real property to satisfy the judgment debt, the court must confirm the sale upon motion of the purchaser' under RCW 6.21.110.[2] RCW 6.21.110(2) states:

> The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties . . . , unless the judgment debtor . . . shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.[3]

The 20-day deadline for procedural objections is mandatory, but it cannot be raised as a bar when the debtor objects to confirmation on the ground that the underlying judgment is void.[4] Confirmation of judicial sales lies primarily within the discretion of the trial

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[2] *Hazel v. Van Beek*, 135 Wn.2d 45, 54 P.2d 1301 (1998).

[3] (Emphasis added.)

[4] *Hazel*, 135 Wn.2d at 52-53.

court, and an appellate court will not reverse the confirmation except for manifest abuse of that discretion.[5]

In this case, it is undisputed that Dahlquist objected to the sale on April 15, 2001[6] 26 days after the notice of filing was mailed and 6 days past the statutory period for objecting to the confirmation under RCW 6.21.110(2). Dahlquist offers three arguments why his objection asserting a homestead exemption is not time barred.

First, he claims that he should have been allowed 26 days because under 'the general rule,' he would have been permitted an extra three days while the notice was in the mail.[7] Because the 23rd day was a

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[5] *Braman v. Kuper*, 51 Wn.2d 676, 681, 321 P.2d 275 (1958).

[6] Dahlquist asserted the trial court should refuse to confirm the sale because (1) the sale was void because Dahlquist resides on the property and the sale was executed under RCW 6.17 for non-homestead property and (2) the property was sold for a value far below the actual value of the homestead and the judgment amount.

[7] Dahlquist cites CR 5(b)(2)(A) for this 'general rule':

> (2) Service by Mail.
>
> (A) How Made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day

(Continued on following page)

Saturday, he claims he actually had until the following Monday to respond under CR 6(e).[8] We reject this argument. Dahlquist cites no authority supporting his assertion that the Civil Rules supercede the 20-day period set forth in RCW 6.21.110. The statute specifically states that the 20-day period begins upon 'the mailing of the notice.' Accordingly, CR 5(b)(2)(A) and CR 6, which prescribe how 'service' is properly made, do not apply here. It is also difficult to imagine how the notice, entitled 'Notice of Return of Sheriff's Sale on Real Property' sent to Dahlquist on March 20 could have more clearly spelled out the 20-day deadline for objection and when it began. In its entirety, the text of the one-page letter stated:

I. Basis

As provided by RCW 6.21.110 – Confirmation of Sale, the Superior Court has received and filed on 3-19-02, a Sheriff's Return on Sale of Real Property in the above entitled action. Pursuant to this statute, the judgment creditor or successful purchaser at the

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other than a Saturday, Sunday or legal holiday, following the third day.

[8] CR 6(e) states:

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Sheriff's Sale is entitled to have an Order Confirming Sale unless the judgment debtor or his representative files objections to the sale with the Clerk of the Court within twenty (20) days from the mailing of this notice.

II. Hearing

This is an individually calendared (IC) case. Please contact the staff of the courtroom of the Judge that has been assigned to this case to set a hearing date.

III. Proof of Mailing

I certify that a copy of this notice was mailed, by first class mail, on this date, to all parties in this action who are not in default.

Date: March 20, 2002

/s/ Paul L. Sherfey, Director and Superior Court Clerk[9]

Second, Dahlquist argues that even if we reject his reasoning, we should allow a hearing on the merits on the basis of excusable neglect by treating the execution without a hearing as the equivalent of a default judgment under Civil Rule 60.[10] He also

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[9] (Emphasis added.)

[10] *Dahlquist cites Lindgren v. Lindgren*, 58 Wn.App. 588, 595, 794 P.2d 526 (1990) (stating, 'Default judgments are

(Continued on following page)

claims the affidavits about his residential status are inaccurate and therefore 'may be based on fraud,' which supports setting aside the judgment under CR 60. Vukich responds, arguing that Dahlquist cannot raise the issue of whether CR 60 allows him to proceed with his homestead exemption because he raises it for the first time on appeal.[11] We agree with Vukich and decline to consider the argument. Dahlquist did not submit a reply brief, so he neither responds to Vukich nor provides a citation to the record showing he did in fact raise the issue in the trial court.[12] In addition, Dahlquist does not provide any analysis supporting his claim of excusable neglect or any evidence supporting his allegations of fraud.

Finally, Dahlquist claims that the writ of execution and the confirmation are void because of alleged fraud, Vukich's counsel's failure to meet the due

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disfavored, and therefore, a trial court should 'exercise its authority 'liberally, as well as equitably, to the end that substantial rights be preserved and justice between the parties be fairly and judiciously done.'''') (*quoting Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979)), *review denied*, 116 Wn.2d 1009 (1991).

[11] Vukich also argues the request for relief under CR 60 should be denied because it is restricted to judgments, and CR 60 motions must initially be heard by the trial court.

[12] A cursory review of the record suggests Dahlquist did not present this argument below. Although he cites CR 60 once in his Memorandum re: Objection to Motion Confirming Sheriff's Sale filed May 30, 2002, he does not present argument explaining why CR 60 App. 27 applies in this case or why he should be granted relief under its authority.

diligence requirement of RCW 6.17.100(3), and the court's failure to consider the homestead exemption. As stated above, Dahlquist offers no evidence of fraud. Nor does he offer evidence that Vukich's counsel did not meet the statutory due diligence requirement. And Dahlquist's tardy homestead claim does not prevent the trial court from enforcing the 20-day deadline for objecting to a sheriff's sale. Only when the debtor objects to confirmation of a sheriff's sale on the ground that the underlying judgment is void[13] can he successfully argue the 20-day deadline is not an absolute bar of the claims.[14] Dahlquist objects to procedural aspects of the sale, specifically that the sale was not conducted in conformity with the Washington Homestead Statute. But the 20-day deadline bars this objection.

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[13] *See Hazel*, 135 Wn.2d at 53 (stating, 'When a debtor objects to confirmation of the sale on the ground that the underlying judgment is void, the 20-day deadline for objections cannot be raised as a bar to a trial court's considering the objection.'). *See also Betz v. Tower Sav. Bank*, 185 Wash. 314, 324, 55 P.2d 338 (1936) (stating, '[A]n order confirming a sale concludes inquiry into any irregularity attending it, save as to jurisdictional matters.'); *Mueller v. Miller*, 82 Wn.App. 236, 251, 917 P.2d 604 (1996) (stating, 'A trial court has no discretion when faced with a void judgment, and must vacate the judgment 'whenever the lack of jurisdiction comes to light.'') (quoting *Mitchell v. Kitsap County*, 59 Wn.App. 177, 180-81, 797 P.2d 516 (1990)).

[14] *See Hazel*, 135 Wn.2d at 53; *Mueller v. Miller*, 82 Wn.App. at 249; *Northern Commercial Co. v. E.J. Hermann Co., Inc.*, 22 Wn.App. 963, 593 P.2d 1332 (1979).

In sum, we conclude as a matter of law that Dahlquist's objection to the sale was time barred and affirm the trial court's decision to confirm the sale.

II. What is the proper forum for Dahlquist to assert his homestead claim?

Although we conclude that Dahlquist's objection to the sale is time barred as a matter of law, he can still assert his homestead claim. A sale of real property on which there is a valid homestead claim that does not comply with the statute governing sale of homestead is void.[15] Confirmation can only cure irregularities in the manner in which a sheriff's sale is conducted. It cannot make a void sale valid.[16] When property claimed as homestead has been sold under execution, the owners are entitled to bring an action asserting their homestead claim.[17] So the next issue is whether this court should remand for supplemental proceedings to consider the homestead claim or whether Dahlquist must file an independent action. We conclude that Dahlquist must file an independent action.

Vukich claims that the holding in *Traverso v. Cerini*[18] supports his argument that a homestead claim must be argued in a separate action. In

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[15] *Traverso v. Cerini*, 146 Wash. 273, 278, 263 P. 184 (1928).

[16] *Mueller*, 82 Wn App. at 248.

[17] *Domke v. Beck*, 18 Wn.2d 568, 571, 139 P.2d 1017 (1943).

[18] 146 Wash. 273, 279, 263 P. 184 (1928).

Traverso, the court stated, '{T}he question of a validity of a homestead claim could not be determined, where it was interposed as an objection to the confirmation of a sale, and that it was the duty of the court to confirm the sale notwithstanding the objections, leaving the parties to try out the issue in an independent action brought for that purpose."[19] There is one exception to this rule. In *Enyart v. Humble*,[20] we declined to follow Traverso in an effort to further the interests of fairness and efficiency.

We said:

> {T}he trial court in this case should have decided the status of the {debtors'} homestead claim on their motion to quash, if not upon their objection to the sale. There is no reason to compel the {debtors} to seek an adjudication of their homestead rights in some future action. They timely raised the issue of the validity of the homestead before a court of general jurisdiction in the county in which the property claimed exempt was situated. All necessary parties were present; it served no useful purpose to defer resolution of the homestead question until an independent action could be commenced, the pleadings settled, and the case brought on for trial. . . .[21]

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[19] *Id. See also Costanzo v. Harris*, 71 Wn.2d 254, 427 P.2d 963 (1967); *Scott v. Guiberson*, 72 Wash. 36, 129 P. 886 (1913).

[20] 17 Wn.App. 181, 562 P.2d 648 (1977).

[21] *Id.* at 184 (emphasis added).

Because Dahlquist did not timely raise the issue of the validity of his homestead claim, Enyart's fairness and efficiency rationale does not apply here. We accordingly reject his request for remand. He must bring an independent action to pursue his homestead claim.

III. Attorney Fees

Both parties seek attorney fees on appeal under RAP 18.1. We award attorney fees to Vukich because, as he asserts in his brief, much of the appeal could have been easily avoided by a brisk reading of the Civil Rules. In addition, the remedy Dahlquist seeks was always available to him through a collateral action, and he admitted at oral argument that he was aware of this remedy. Asserting his claim in this appeal of the confirmation of sale was improper. Affirmed.

IN THE SUPERIOR COURT OF WASHINGTON, FOR KING COUNTY	
PATRICK VUKICH Plaintiff, vs DARYL DAHLQUIST and CECILE MARTEL, Defendants.	NO. 93-2-28320-2 AMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT *CLERK'S ACTION REQUIRED (Filed Jun. 5, 1995)

THIS MATTER having come on for hearing before the Honorable Michael J. Fox on May 12, 1995; Plaintiff, Patrick Vukich, being present personally and by and through his attorney, James F. Pleasants; Defendants pro se, Daryl Dahlquist appearing, and Cecile Martel not appearing; the Court having reviewed the following documents and attached list of exhibits submitted by the Plaintiff, Patrick Vukich:

1. Affidavit of Patrick Vukich dated 4/3/95, with all attachments.

2. Deposition of Betty Dahlquist (portion quoted).

3. Additional documents listed in Exhibit list attached hereto.

4. The pleadings herein.

5. Portion of transcript of testimony of Grover Pell before Judge Roberts and the following documents submitted by Daryl Dahlquist.

And the following materials from Defendant Daryl Dahlquist:

1. Response of Daryl Dahlquist with attachments;

2. Affidavit of Cecile Martel;

3. All materials submitted by Daryl Dahlquist; and having heard oral argument by the parties, the court now makes the following:

I. FINDINGS OF FACT:

1. On April 23, 1990, a Stipulated Decree was signed and entered ex parte with concurrence and signature of all parties and their attorneys, in King County Superior Court, under Cause No. 87-2-15848-9. The Decree was entered following trial before Judge Roberts, who orally ruled in favor of Patrick Vukich and against Betty C. Dahlquist and Aura Pell.

2. The Stipulated Decree is valid on its face and has not been set aside by any court.

3. The stipulated Decree provides in pertinent part:

> IT IS HEREBY ORDERED AND DECREED that the parties hereto are the owners of the respective properties involved in this lawsuit to the extent indicated by the record title thereto and that no party has acquired any

> interest or rights in the property of any other party by adverse possession or prescription, and that the true boundary lines between those properties are those lines as established by the record title which has been accurately surveyed by James Hart.
>
> IT IS FURTHER DECREED that each party and anyone claiming through or on behalf of each party is enjoined from trespassing upon, damaging or interfering with the property of the other parties. All claims of the parties against each other in this litigation are dismissed with prejudice and without any costs or attorney fees being awarded. This Decree shall not be subject to appeal.

4. The Defendants in the present lawsuit, Daryl Dahlquist and Cecile Martel, are successors in interest to Betty Dahlquist and Aura Pell. Daryl Dahlquist and Cecile Martel's counterclaim raises the same claim of adverse possession and prescription that was determined in the prior Stipulated Decree.

5. Daryl Dahlquist and Cecile Martel's have not presented any facts that would establish a new claim of adverse possession, independent of the claims of their predecessors, for the requisite time period.

II. CONCLUSIONS OF LAW.

1. There is no genuine issue of material fact as to the findings stated above. Accordingly, Plaintiff's Motion for Summary Judgment should be granted.

2. The court has jurisdiction over the parties and subject matter herein.

3. Daryl Dahlquist and Cecile Martel are bound by the Stipulated Decree, and are precluded from relitigating the issues decided therein.

III. Accordingly, it is hereby ORDERED and DECREED:

1. Summary Judgment is hereby granted to Plaintiff Vukich against Defendants Daryl Dahlquist and Cecile Martel.

2. The deeds dated 4/15/91 (King County Rec.No. 9104170275), 4/16/91 (King County Rec. No. 9104170276) and 6/7/93 (King County Rec. No. 9306081603), purporting to create an interest in Lot 71 as to Cecile Martel and/or Daryl Dahlquist are null and void. Neither Cecile Martel nor Daryl Dahlquist, or any successor of them has any right or interest in Lot 71, described below.

3. Title to said Lot 71 is quieted in Patrick Vukich in fee simple. Lot 71 is legally described as follows:

PARCEL B:

THE SOUTH 432 FEET OF THE WEST HALF OF THE EAST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 22 NORTH, RANGER 5 EAST, "WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE FOLLOWING DESCRIBED TRACT:

BEGINNING 888 FEET SOUTH OF THE NORTHWEST CORNER OF THE WEST HALF OF THE EAST HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 26;
THENCE EAST 92 FEET;
THENCE SOUTH TO THE SOUTH LINE OF SAID SUBDIVISION;
THENCE WEST 92 FEET;
THENCE NORTH TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION THEREOF LYING SOUTHERLY OF THE NORTH MARGIN OF SOUTHEAST 272ND STREET (KENT-LANGELY (sic) ROAD) AS ESTABLISHED BY DEEDS RECORDED UNDER RECORDING NUMBERS 2002257 AND 2002262.

4. Defendants Cecile Martel and Daryl Dahlquist are permanently enjoined from trespassing upon, dumping materials on, clouding or encumbering title on, changing assessment information on, or otherwise interfering with Patrick Vukich's quiet enjoyment of Lot 71, the boundaries of which have been measured and marked by surveyor James Hart.

5. Defendants are directed to immediately remove the trailer, fence and utility pole at Space 7, so that all are entirely on the Martel side of the boundary line (i.e., on Tax Lot 67 or 70).

6. The issue of damages for the past encroachments and interferences by Defendants are reserved for trial.

7. Daryl Dahlquist is enjoined from filing any further legal action against Mr. Patrick Vukich and his family members. The Clerk's office is directed not to accept any further complaints or filings from Mr. Dahlquist against Mr. Vukich without a court order allowing such filing. Any filings made or attempted by Mr. Dahlquist in violation of this Order shall be mailed back to Mr. Dahlquist by the County Clerk, and a service charge of $8.00 will be assesses by the Clerk against Mr. Dahlquist for any such filings.

DONE IN OPEN COURT this 30th day of May, 1995.

/s/ Michael J. Fox
Honorable Michael J. Fox, Judge

Presented by:

/s/ James F. Pleasants
James F. Pleasants WSB #8541
Attorney for Patrick Vukich

THE SUPREME COURT OF WASHINGTON

PATRICK VUKICH, Respondent, v. DARYL DAHLQUIST Petitioner.	)	NO. 79990-3 **ORDER** C/A NO. 57026-9-I

Department II of the Court, composed of Chief Justice Alexander and Justices Chambers, Madsen, Fairhurst and Stephens (Justice C. Johnson sat for Justice Chambers), at its January 8, 2008, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 9th day of January, 2008.

For the Court

/s/ Gerry L. Alexander
CHIEF JUSTICE

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(2)

No. 07-1278

FILED
MAY 12 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

DARYL DAHLQUIST,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Washington

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IDENTITY OF ANSWERING PARTY

Patrick Vukich, Respondent, hereby provides this brief in opposition to the Petition of Daryl Dahlquist, Petitioner, seeking review in the Supreme Court of the United States of a decision of the Washington State Supreme Court denying Dahlquist's Petition for Review.

BASIS OF OBJECTION TO THE PETITION FOR REVIEW

Under the considerations governing review on certiorari set forth in Supreme Court Rule 10, Dahlquist's Petition for Writ of Certiorari should be denied. Mr. Dahlquist claims that there is a significant constitutional issue in his case. This case was actually about Mr. Dahlquist's lack of timeliness in pursuing his claim, and his untimely attempt to circumvent and collaterally attack a final order from 1995 requiring him to obtain permission before filing suit against Mr. Vukich.

The final order from which Mr. Dahlquist appeals is not the decision of the Washington State Court of Appeals, as erroneously stated by Mr. Dahlquist under his statement of jurisdiction. Rather it is the decision of the Washington State Supreme Court denying Dahlquist's Petition for Review of the decision of the Court of Appeals. Mr. Dahlquist's Petition for review to the Washington State Supreme Court was not filed timely under Washington Court Rule of

Appellate Procedure (RAP) 13.4(a), as it was filed on March 5, 2007, more than 30 days after the February 2, 2007 decision of the Court of Appeals. That untimeliness in filing his Petition to the Washington State Supreme Court alone provides a sufficient basis for the Washington Supreme Court's denial of Dahlquist's Petition for Review.

Even in the Washington State Court of Appeals, Dahlquist mentioned the First Amendment issue for the first time in his Reply Brief, and only provided legal authority to the court and counsel just four days before oral argument. See Commissioner's Ruling Granting Motion on the Merits to Affirm at page 7 of the Appendix to Petitioner's Petition for Writ. (App. 7) The court found the briefing to be inadequate, and noted that a party may not "compel the court to scour the legal landscape to make sense of vague and general assertions of law thrown together . . . " (App. 5). Mr. Dahlquist's First Amendment argument was not denied because it was raised for the first time on appeal. It was denied because it was raised for the first time in a supplemental response to motion on the merits, was inadequately briefed, lacked merit, and was launched as a collateral attack on a final order that was more than ten years old.

The 1995 order requiring Dahlquist to seek permission before filing legal action against Mr. Vukich was never appealed by Dahlquist. The trial court in its 1995 order noted that Dahlquist's counterclaims raised the issue of adverse possession that had already been litigated in 1990. Dahlquist had

deliberately trespassed and placed trash and a trailer on Mr. Vukich's property, and had filed wild deeds that clouded Mr. Vukich's title. He was also enjoined from those actions. Dahlquist persisted, and was found in contempt. The court noted: "Defendant, Daryl Dahlquist's defenses and claims of title are without merit. There is no legal basis for his arguments. His submissions have been lengthy, but virtually incomprehensible. This has been an abuse of the judicial process." (Commissioner's Ruling App. 10, footnote 9). Eventually judgments for damages were awarded against him, which were the basis for the foreclosure action that Dahlquist claims was a violation of his homestead rights.

In his Statement of the Case, Dahlquist claims that the property purchased at the sheriff's sale was worth $160,000. The property foreclosed upon was a one-third interest of a tenant in common. Dahlquist never provided competent professional evidence of the value of the partial interest, and Vukich objects to his insertion of that value into the Statement of the Case.

Mr. Dahlquist did not appeal or seek to set aside the order requiring him to obtain permission before suing Mr. Vukich. Instead, he simply ignored it and proceeded to file suit, which was rejected in compliance with the order. Dahlquist never provided any authority that under Washington law he may challenge the 1995 order collaterally by violating it. *Tory v. Cochran*, 544 U.S. 734, 125 S. Ct. 2108, 161 L. Ed. 2d 1042, cited by Dahlquist, involved a question of mootness in a direct and timely appeal of a permanent

injunction on speech. The Supreme Court cited California law permitting a party to wait until a violation of an injunction is alleged to challenge the validity of the injunction. Washington law is to the contrary. *State v. Alter,* 67 Wn. 2d 111, 406 P.2d at 765 (1965). In Washington, an order valid on its face and not void for lack of jurisdiction, must be followed unless and until it is set aside. *State v. Noah*, 103 Wash. App. 29, 44, 9 P.3d 858 (Div. I, 2000).

Even if Mr. Dahlquist had legally challenged the 1995 order, by appealing it or moving to set it aside, the order was justified by his history of repeated trespass in violation of court orders, filing of bogus deeds to cloud title, and raising of frivolous counterclaims when Vukich moved to clear his title. The court found this to be a misuse of the legal system.

When Dahlquist came before the court in 2005, belatedly seeking permission to file suit against Vukich, he had established a long history of contempt, trespass, and even trying to force a court to make a citizens' arrest of Vukich. The court's decision to screen any lawsuit attempted to be filed by Dahlquist against Vukich was justified by Dahlquist's actions.

CONCLUSION

The petition for a Writ of Certiorari in this matter should be denied.

Respectfully submitted,

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Attorney for Respondent

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No. 07-1278

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In The

Supreme Court of the United States

DARYL DAHLQUIST,

Petitioner,

v.

PATRICK G. VUKICH,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Washington

REPLY BRIEF

DARYL DAHLQUIST
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15238 SE 272d Street
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253-631-2906

INTRODUCTION

The new points raised by respondent at

BASIS TO OBJECTION
THE PETITION FOR REVIEW

The first, second and third paragraphs make reference to

> Mr. Dahlquist's Petition for review to the Washington State Supreme Court was not filed timely under Washington Court Rule of Appellant Procedure (RAP) 13.4(a), as it was filed on March 5, 2007, more than 30 days after the February 2, 2007 decision of the Court of Appeals. That untimeliness in filling his Petition to the Washington State Supreme Court alone provides a sufficient basis for the Washington Supreme Court's denial of Dahlquist's petition for Review.

March 5, 2007 is 31 days from February 2, 2007. (RAP) 18.6(a) provides that if the last day falls on a Saturday, Sunday* or legal holiday the period follows the next week day thus being Monday, March 5, 2007.

Dahlquist's first reference to PETITION FOR REDRESS OF GRIEVANCE, FIRST AMENDMENT, U.S. CONSTITUTION, & EQUAL PROTECTION OF THE LAW, FOURTEENTH AMENDMENT, was

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* February 2007 has 28 days, minus 2 days equals 26 days and add the first four days of March 2007 this equals 30 days and the 30-day appeal period ended on Sunday, March 4th, 2007.

attached as Exhibit 4, 1 thru 18 with attachments. App. 15 to Petitioner's Petition for Writ, at number, 2. Reply to objection to motion for order granting approval to proceed with suit as originally filed.

Respondent states, "The 1995 order requiring Dahlquist to seek permission before filling legal action against Mr. Vukich was never appealed by Dahlquist." Respondent's brief p.2. "Mr. Dahlquist did not appeal or seek to set aside the order requiring him to obtain permission before suing Mr. Vukich." Respondent's brief p.3. Dahlquist did appeal the May 30, 1995 AMENDED ORDER ON MOTION FOR SUMMARY JUDGEMENT (App. 30 of Petitioner's Petition For Writ).

To clarify when Vukich was unable to prevail against Dahlquist (bottom page 9 Petitioner's Petition For Writ) in the 91-2-14190-8 cause and Dahlquist was led to believe the case was over by his attorney (who did not consult with two other clients) only to find out when Vukich refiled the suit and the May 30, 1995 order was handed down and all of Dahlquist's legal defenses "fraud in fact and law, RCW 4.16.040 and RCW 4.16.020, case dismissed and a motion denied, and two material perjuries by Vukich," when Dahlquist's defenses were removed on 5-30-95 in the 93-2-28320-2 cause then where Vukich could not prevail 91-2-14190-8 now Dahlquist cannot defend and is unable to address the above legal defenses on appeal, the injunctive order was just attached to it.

The Respondent goes on to say, "The court found the briefing to be inadequate, and noted that a party may not 'compel the court to scour the legal landscape to make sense of vague and general assertions of law thrown together . . . '" Respondent's brief p.2. We are not talking about some two million people in prison, or about some four million people that are homeless, we are talking about a man's homestead exemption that is personal to the person.

Vukich objects to "Dahlquist claims that the property purchased at the sheriff's sale was worth $160,000." Respondent's brief p.3. Dahlquist is noted as a one-third owner (App. 20) and at the time of the sheriff's sale held title as his separate estate, lived on the property, still does, and has since September 1980, has a mailing address of 15238 SE 272nd St., Kent, WA, 98042. Having a disability and being an owner/occupant qualifies for reduced real-estate tax status.

Washington State homestead exemption RCW 6.13.010, *et seq.*

I. The trial court's injunction triggered the tolling provisions of RCW 4.16.230.

There appears to be little case law which interprets the wording of RCW 4.16.230. The absence of controversy, should not prevent this Court from intervening to provide clarifying interpretation of the statute. That statute states:

> When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

RCW 4.16.230.

The Commissioner's ruling suggests that because Mr. Dahlquist claims that the statute may only "seem to apply" that the argument can be ignored. (App. 12) However, if the statute applies, the statute should not be ignored. If the statute's words and meaning are clear, recourse to legislative history is unnecessary. *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wash.2d 226, 88 P.3d 375 (2004). In this case, the simple application of the wording of that statute provides Mr. Dahlquist with the procedural protections he would have had but for the interruption by what he claims was an invalid prior restraint by the trial court. Under the order of May 30, 1995, Dahlquist lost the ability to determine when his lawsuit should be filed, if a lawsuit should involve any member of the Vukich family. The injunction, still in effect on the date of Judge Trickey's order, does not require a "relate back" device as suggested by the Commissioner's ruling (App. 12). On the other hand, if the clerk of the court, having accepted the March 15, 2005 filing and assigning it a cause number, and then having rejected the filing, lacked the authority to do so, the March 15, 2005 date would remain the actual filing date. In these circumstances, both the

clear wording of the statute and its fair effect on the proceedings invoked by Mr. Dahlquist warrant the determination that a three-year statute of limitations could not fairly obstruct the filings of Mr. Dahlquist.

II. The extinguishing of the Dahlquist homestead claim violated the right of homestead established by Article XIX of the Washington Constitution.

The right of homestead derives from the Washington State Constitution which states, "[t]he legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families." Wash. Const., Art. XIX. Homestead and exemption laws are favored in the law and are to be liberally construed. *Cody v. Herberger,* 60 Wash.2d 48, 371 P.2d 626 (1962). The assertion of a homestead right is presumptively valid. RCW 6.13.070. It has held that a foreclosure and its auxiliary proceedings do not engage principles of res judicata with regard to the question of the asserted homestead right's validity. *Costanzo v. Harris.* 71 Wash.2d 254, 427 P.2d 963 (1967). A reviewing court may be limited by statute to whether there have been irregularities in the sheriff's sale; that kind of review, as noted by the Court of Appeals, does not preclude independent consideration of the issue of whether or not a valid and constitutional right of homestead has been asserted and what is the value of that homestead

right. That independent consideration appears to be precisely what Mr. Dahlquist has not been granted.

CONCLUSION

Daryl Dahlquist respectfully requests this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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